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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1296

Introduced by Assembly Member Bonilla

February 18, 2011

An act to add Part 3.8 (commencing with Section 15925) to Division 9 of the Welfare and Institutions Code, relating to public health.

LEGISLATIVE COUNSEL’S DIGEST

AB 1296, as amended, Bonilla. Health Care Eligibility, Enrollment, and Retention Act.

Existing law provides for various programs to provide health care coverage to persons with limited financial resources, including the Medi-Cal program and the Healthy Families Program. Existing law provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law, the federal Patient Protection and Affordable Care Act (PPACA), requires each state to, by January 1, 2014, establish an American Health Benefit Exchange that facilitates the purchase of qualified health plans by

qualified individuals and qualified small employers, as specified, and meets certain other requirements. Existing law, the California Patient Protection and Affordable Care Act, creates the California Health Benefit Exchange (Exchange), specifies the powers and duties of the board governing the Exchange relative to determining eligibility for enrollment in the Exchange and arranging for coverage under qualified health plans, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and qualified small employers by January 1, 2014.

This bill would enact the Health Care Reform Eligibility, Enrollment, and Retention Planning Act, which would require the California Health and Human Services Agency, in consultation with specified entities, to establish standardized single, accessible application forms and related renewal procedures for state health subsidy programs, as defined, in accordance with specified requirements. The bill would specify the duties of the agency and the State Department of Health Care Services under the act, and would require the agency to provide specified information to the Legislature by July 1, 2012, regarding policy changes needed to implement the bill. The application development requirements of the bill would otherwise be operative January 1, 2014, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 3.8 (commencing with Section 15925) is
2 added to Division 9 of the Welfare and Institutions Code, to read:

3
4 PART 3.8. HEALTH CARE REFORM ELIGIBILITY,
5 ENROLLMENT, AND RETENTION PLANNING ACT

6
7 15925. (a) This part shall be known, and may be cited, as the
8 Health Care Reform Eligibility, Enrollment, and Retention
9 Planning Act.

10 (b) (1) The California Health and Human Services Agency, in
11 consultation with the State Department of Health Care Services
12 (department), Managed Risk Medical Insurance Board (MRMIB),
13 the California Health Benefit Exchange (Exchange), the California
14 Office of Systems Integration, counties, health care service plans,

1 consumer advocates, and other stakeholders shall undertake a
2 planning and development process ~~to implement~~ *regarding* this
3 part and aspects of the federal Patient Protection and Affordable
4 Care Act (PPACA) (Public Law 111-148), as amended by the
5 federal Health Care and Education Reconciliation Act of 2010
6 (Public Law 111-152), and regulations or guidance issued pursuant
7 to these acts, related to eligibility for, and enrollment and retention
8 in, ~~public health coverage~~ *state health subsidy* programs.

9 (2) The planning and development process shall provide
10 stakeholders the opportunity to provide meaningful input into the
11 planning and development of the aspects of eligibility, enrollment,
12 and retention identified in this section. This process shall be
13 completed in time for all of the following to occur:

14 (A) The certification and approval of the eligibility, enrollment,
15 and retention system, as required by PPACA and regulations and
16 guidance issued thereunder.

17 (B) The approval of enhanced federal funding for Medi-Cal
18 eligibility system development, implementation, and maintenance.

19 (C) The readiness of the eligibility, enrollment, and retention
20 processes to accept and process applications, as required by
21 ~~October 2013~~ *federal law*.

22 (3) The planning and development process shall consider issues,
23 including, but not limited to, all of the following:

24 (A) Whether to use the application developed by the federal
25 Secretary of Health and Human Services, pursuant to Section 1413
26 of the PPACA (42 U.S.C. Sec. 18083), or whether to develop a
27 separate state form.

28 (B) What process to use for Medi-Cal eligibility determinations
29 for non-Modified Adjusted Gross Income (MAGI) populations,
30 including whether to develop a supplemental application form and
31 how the applications will be processed.

32 (C) Whether to adopt a process for hospitals to enroll infants
33 deemed eligible for Medi-Cal under Section 1396a(e)(4) of Title
34 42 of the United States Code or the Healthy Families Program
35 under Section 12693.70 of the Insurance Code immediately online,
36 without an application.

37 (D) What data collection standards to utilize for the collection
38 of race, ethnicity, primary language, and disability status.

39 (E) Whether to create a process to allow recipients to provide
40 an update to eligibility information in between renewal dates and

1 to have the option to renew eligibility at the time of the update,
2 resetting the renewal date.

3 *(F) Whether to renew eligibility for a state health subsidy*
4 *program based on information from a public benefits program, if*
5 *the recipient is otherwise eligible.*

6 ~~(F)~~

7 *(G) Protections for the confidentiality of personal information.*

8 ~~(G)~~

9 *(H) What process to use to enable applicants determined eligible*
10 *for and recipients of a ~~public health coverage~~ state health subsidy*
11 *program to choose a health plan, if applicable.*

12 (4) The agency shall provide the appropriate fiscal and policy
13 committees of the Legislature with information reflecting the
14 process conducted pursuant to paragraph (1) by July 1, 2012,
15 regarding policy and statutory changes needed to develop and
16 implement the eligibility, enrollment, and retention system for
17 health coverage in compliance with this part.

18 (c) The information reporting requirement imposed under
19 paragraph (4) of subdivision (b) is inoperative on January 1, 2016,
20 pursuant to Section 10231.5 of the Government Code.

21 15926. (a) The following definitions apply for purposes of
22 this part:

23 (1) "Accessible" means in compliance with Section 11135 of
24 the Government Code, Section 1557 of the PPACA, and regulations
25 or guidance adopted pursuant to these statutes.

26 (2) "Limited-English-proficient" means ~~speaking English less~~
27 ~~than very well. not speaking English as one's primary language~~
28 *and having a limited ability to read, speak, write, or understand*
29 *English.*

30 (3) "State health subsidy programs" means the programs
31 described in Section 1413(e) of PPACA.

32 (b) An individual shall have the option to apply for state health
33 subsidy programs in person, by mail, online, by facsimile, or by
34 telephone.

35 (c) (1) A single, accessible, standardized paper, electronic, and
36 telephone application for state health subsidy programs shall be
37 developed by the department in consultation with MRMIB and
38 the board governing the Exchange as part of the stakeholder process
39 described in subdivision (b) of Section 15925. The application
40 shall be used by all entities authorized to make an eligibility

1 determination for any of the state health subsidy programs and by
2 their agents.

3 (2) The application shall be tested and operational by the date
4 as required ~~or permitted~~ by the federal Secretary of the Health and
5 Human Services.

6 (3) The application ~~forms~~ *form* shall, to the extent not
7 inconsistent with federal statutes, regulations, and guidance, satisfy
8 all of the following criteria:

9 (A) Include simple, user-friendly language and instructions.

10 (B) Do not ask for information related to a nonapplicant that is
11 not necessary to determine eligibility in the applicant's particular
12 circumstances.

13 (C) Require only information necessary to support the eligibility
14 and enrollment processes for state health subsidy programs.

15 (D) May be used for, but shall not be limited to, screening.

16 (E) Ask, *or be used otherwise to identify*, if the mother of an
17 infant applicant under one year of age had coverage through a state
18 health subsidy program for the infant's birth, for the purpose of
19 automatically enrolling the infant into the applicable program
20 without the family having to complete the application process for
21 the infant.

22 (F) Include questions that are voluntary for applicants to answer
23 regarding demographic data categories, including race, ethnicity,
24 primary language, disability status, and other categories recognized
25 by the federal Secretary of Health and Human Services under
26 Section 4302 of the PPACA.

27 (d) Nothing in this section shall preclude the use of a
28 provider-based application form or enrollment procedures for
29 ~~public health coverage~~ *state health subsidy* programs or other
30 health programs that differs from the application form described
31 in subdivision (c), and related enrollment procedures.

32 (e) The entity making the eligibility determination shall grant
33 eligibility immediately whenever possible *and with consent of the*
34 *applicant* in accordance with the *state and federal* rules governing
35 state health subsidy programs.

36 (f) (1) If the eligibility, enrollment, and retention system has
37 the ability to prepopulate an application form for insurance
38 affordability programs with personal information from available
39 electronic databases, an applicant shall be given the option, with
40 his or her informed consent, to have the application form

1 prepopulated. Before a prepopulated renewal form or, if available,
2 prepopulated application is submitted to the entity authorized to
3 make eligibility determinations, the individual shall be given the
4 opportunity to provide additional eligibility information and to
5 correct any information retrieved from a database.

6 (2) All state health subsidy programs may accept self-attestation,
7 instead of requiring an individual to produce a document, with
8 respect to all information needed to determine the eligibility of an
9 applicant or recipient, ~~except for citizenship and immigration status~~
10 ~~documents that may be required by the federal Secretary of Health~~
11 ~~and Human Services.~~ *applicant or recipient, to the extent permitted*
12 *by state and federal law.*

13 (3) An applicant or recipient shall have his or her information
14 electronically verified in the manner required by PPACA and
15 implementing federal regulations and guidance.

16 (4) Before an eligibility determination is made, the individual
17 shall be given the opportunity to provide additional eligibility
18 information and to correct information.

19 (5) An applicant shall not be denied eligibility *have his or her*
20 *eligibility delayed or denied* for any state health subsidy program
21 without being given a reasonable opportunity, of at least the kind
22 provided for under the Medi-Cal program pursuant to Section
23 14007.5 and paragraph (7) of subdivision (d) of Section 14011.2,
24 to resolve discrepancies concerning any information provided by
25 a verifying entity.

26 (6) To the extent federal financial participation is available, an
27 applicant shall be provided benefits in accordance with the rules
28 of the state health subsidy program, as implemented in federal
29 regulations and guidance, for which he or she otherwise qualifies
30 until a determination is made that he or she is not eligible and all
31 applicable notices have been provided. ~~The responsible entity shall~~
32 ~~adopt any available federal option as may be necessary to ensure~~
33 ~~that an otherwise eligible applicant receives benefits immediately.~~

34 (g) The eligibility, enrollment, and retention system shall ensure
35 that *offer* an applicant and recipient ~~has available~~ assistance with
36 his or her application or renewal for ~~state health subsidy programs~~
37 *a state health subsidy program* in person, over the telephone, and
38 online, and in a manner that is accessible to individuals with
39 disabilities and those who are limited English proficient.

1 (h) (1) During the processing of an application, renewal, or a
2 transition due to a change in circumstances, an entity making
3 eligibility determinations for a public health coverage program
4 shall ensure that an eligible applicant and recipient of state health
5 subsidy programs that meets all program eligibility requirements
6 and complies with all necessary requests for information moves
7 seamlessly between programs without any breaks in coverage and
8 without being required to provide any forms, documents, or other
9 information or undergo verification that is duplicative or otherwise
10 unnecessary. The individual shall be informed how to obtain
11 information about the status of his or her application, renewal, or
12 transfer to another program at any time, and the information shall
13 be promptly provided when requested.

14 (2) An individual screened as not eligible for Medi-Cal on the
15 basis of Modified Adjusted Gross Income (MAGI) household
16 income but who may be potentially eligible for Medi-Cal on
17 another basis shall have his or her application or case forwarded
18 to the Medi-Cal program for an eligibility determination. During
19 the period this application or case is processed for a non-MAGI
20 Medi-Cal eligibility determination, ~~the applicant or recipient shall~~
21 ~~be enrolled or remain enrolled in the program for which the~~
22 ~~available information indicates the applicant or recipient is eligible.~~
23 *if the applicant or recipient is otherwise eligible for a state health*
24 *subsidy program, he or she shall be determined eligible for that*
25 *program.*

26 (3) Renewal procedures shall include all available methods for
27 reporting renewal information, including, but not limited to,
28 face-to-face, telephone, and online renewal.

29 ~~(4) Eligibility for public health coverage programs shall be~~
30 ~~automatically renewed whenever any public benefits program~~
31 ~~renewal is conducted if the recipient is otherwise eligible for a~~
32 ~~state health subsidy program.~~

33 ~~(5)~~

34 (4) An applicant who is not eligible for a state health subsidy
35 program for a reason other than income eligibility, or for any reason
36 in the case of applicants and recipients residing in a county that
37 offers a health coverage program for individuals with income above
38 the maximum allowed for the Exchange premium tax credits, shall
39 be referred to the county health coverage program in his or her
40 county of residence.

(i) Notwithstanding subdivisions (e), (f), and (j), before an online applicant who appears to be eligible for the Exchange with a premium tax credit or reduction in cost sharing, or both, may be enrolled in the Exchange, ~~all~~ *both* of the following shall occur:

(1) The applicant shall be ~~clearly~~ informed of the overpayment penalties under the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (Public Law 112-9), if the individual's annual family income increases by a specified amount or more, calculated on the basis of the individual's current family size and current income, and that penalties are avoided by prompt reporting of income increases throughout the year.

(2) The applicant shall be ~~fully~~ informed of the penalty for failure to have minimum essential health coverage.

~~(3) The applicant shall be given the option to decline immediate enrollment while final eligibility is being determined.~~

(j) The department shall, in coordination with MRMIB and the Exchange board, streamline and coordinate all eligibility rules and requirements among state health subsidy programs using the least restrictive rules and requirements permitted by federal *and state* law. This process shall include the ~~coordination~~ *consideration* of methodologies for determining income levels, assets, rules for household size, citizenship and immigration status, and self-attestation and verification requirements.

(k) (1) Forms and notices developed pursuant to this section shall be accessible and standardized, as appropriate, and shall comply with federal and state laws, regulations, and guidance prohibiting discrimination.

(2) Forms and notices developed pursuant to this section shall be developed using plain language and shall be provided in a manner that affords meaningful access to limited-English-proficient individuals, in accordance with applicable state and federal law, and at a minimum, provided in the same threshold languages as Medi-Cal managed care.

~~(l) The eligibility, enrollment, and retention system shall be both transparent and accountable to the public by complying with, but not limited to, all of the following:~~

~~(1) The department, the California Health and Human Services Agency, MRMIB, and the Exchange board, as defined in Section 100500 of the Government Code, shall provide a forum in which~~

1 the public, including consumers and their advocates, may on a
2 regular basis, and no less than quarterly, give feedback in person
3 on the eligibility, enrollment, and retention system for state health
4 subsidy programs, including, but not limited to, activities of any
5 public or private entity or individual providing eligibility screening
6 or application or retention assistance, for timely corrective action
7 by the department, MRMIB, and the Exchange board.

8 (2) In designing and implementing the eligibility, enrollment,
9 and retention system, the department, MRMIB, and the Exchange
10 board shall provide for an annual postimplementation evaluation
11 by an independent expert to ensure that the business rules comply
12 with the correct eligibility rules of the health programs. This
13 evaluation shall be made available to the public.

14 (3) The department, the California Health and Human Services
15 Agency, MRMIB, and the Exchange board under this subdivision
16 shall have the duty to monitor and oversee private, as well as
17 public, organizational entities engaged in screening for eligibility
18 for a public health coverage program to ensure that the correct
19 eligibility rules and requirements are being used.

20 (l) *The department, the California Health and Human Services*
21 *Agency, MRMIB, and the Exchange board shall establish a process*
22 *for receiving and acting on stakeholder suggestions regarding the*
23 *functionality of the eligibility systems supporting the Exchange,*
24 *including the activities of all entities providing eligibility screening*
25 *to ensure the correct eligibility rules and requirements are being*
26 *used. This process shall include consumers and their advocates,*
27 *be conducted no less than quarterly, and include the recording,*
28 *review, and analysis of potential defects or enhancements of the*
29 *eligibility systems. The process shall also include regular updates*
30 *on the work to analyze, prioritize, and implement corrections to*
31 *confirmed defects and proposed enhancements, and to monitor*
32 *screening.*

33 (m) In designing and implementing the eligibility, enrollment,
34 and retention system, the department, MRMIB, and the Exchange
35 board shall ensure that all privacy and confidentiality rights under
36 the PPACA, the Confidentiality of Medical Information Act of
37 1996 (CMIA) (Part 2.6 (commencing with Section 56) of Division
38 1 of the Civil Code), the Health Insurance Portability and
39 Accountability Act of 1996 (HIPAA) (42 U.S.C. Sec. 1320d et
40 seq.), and the Health Information Technology for Economic and

1 Clinical Health Act (HITECH) (Public Law 111-5), the Medi-Cal
2 program, and the Healthy Families Program are strictly
3 incorporated and followed. This includes, but is not limited to,
4 securing protected health information transmitted through
5 electronic media and adopting and implementing policies and
6 procedures to ensure all of the following:

7 (1) Only information that is strictly necessary for an eligibility
8 determination for the individual who is seeking enrollment in or
9 renewal for a public health coverage program shall be requested
10 in the application, retention, and renewal process for that program.

11 (2) Verification from a third party or database shall be sought
12 only with respect to information required to be obtained or verified
13 under federal law to determine eligibility for the public health
14 coverage program at issue for an individual, in a manner consistent
15 with the privacy and disclosure requirements set forth in HIPPA,
16 CMIA, and HITECH.

17 (3) Applicants and recipients shall be given clear, complete,
18 user-friendly information regarding how their personal information
19 will be used, disseminated, secured, verified, and retained by public
20 health coverage programs in a manner consistent with the privacy
21 and disclosure requirements set forth in HIPPA and HITECH.

22 (4) Responses to security breaches shall be conducted according
23 to the requirements of privacy and confidentiality laws: *the PPACA*
24 *and other federal and state laws are incorporated and followed,*
25 *including responses to security breaches.*

26 (n) Except as otherwise specified, this section shall be operative
27 on and after January 1, 2014.